

PREPARED STATEMENT OF
COMMISSIONER RUTH KRETSCHMER
SBC/AMERITECH MERGER APPLICATION
ICC DOCKET NUMBER 98-0555
SEPTEMBER 23, 1999

In sixteen years as a member of this Commission, I have never participated in such a convoluted, confused and complex process. Redrafts have appeared and reappeared day after day after day. It is almost as if the final order that appeared just this morning is a product of slight of hand. I am dismayed to say that this Commission has not once had a meaningful and thoughtful public discussion on the effects of this merger on competition. Rather, we have been deluged with draft after draft of language which changes so often that a proper analysis and discussion of the proposal has not been possible.

My decisions have always been based on three fundamental criteria, which are of necessity intertwined, namely: the directives found in the Public Utility Act; the stated policy goals of the State of Illinois and this Commission; and, finally, the principles of just and reasonable regulation. This order drastically fails all three tests. Therefore, I cannot support this order.

The majority went through painstaking measures to try to rationalize their decision based on a record that simply does not support that decision. Everyone agrees that the burden was on the Joint Applicants to show, by a preponderance of the evidence, that this merger would meet the standards of Section 7-204. Unfortunately, the Joint Applicants were either unwilling or unable to present sufficient evidence to meet their burden. Reopening the docket produced no evidence that we did not already have three months earlier when we were on the verge of denying this merger.

It is very clear that the State of Illinois, through the legislation passed into law and signed by the Governor, has expressed strong support for competition. The evidence overwhelmingly shows that this merger will have an adverse impact on

competition in Illinois. To find otherwise defies logic and reality. Our own staff said it best when they stated that “[n]o conditions exist that would be able to mitigate the harms that the merger will have on competition.” This merger clearly fails the requirements of Section 7-204(b)(6).

The stated goal of the Joint Applicants’ merger is to increase shareholder value. The record shows that Ameritech’s shareholders will receive a \$13 billion premium for approving this merger. I believe that fairness dictates that Ameritech’s customers should also receive benefits from this merger. The petitioners have stated that there will be monetary benefits because of efficiency and economy of scale; however, not one penny is directly allocated to customers in this Order. The bottom line is that without guaranteed savings for customers, the Order passed by a majority of this Commission benefits only Ameritech’s shareholders. This decision is absolutely ludicrous and an injustice to Illinois citizens who financed Ameritech’s system.

I proposed an average annual credit in rates to customers starting at \$63 million per year and increasing to \$91 million per year in five years. Perhaps in the grand scheme of things, this may not seem important to some. It does to me. However, a windfall of \$383 million to Ameritech over five years is certainly real money. This fleecing of Illinois customers will enable Ameritech to further delay competition by subsidizing both competitive and non-competitive services and by financing further competition-delaying litigation giving them yet another advantage over possible competitors.

Incredible as it may seem, the majority’s decision on the allocation of possible savings depends solely on the good graces of Ameritech not to bury or shift the savings and costs. Further, even if there are some savings, the majority’s decision allocates only 50% to the customers rather than 100% of the savings that customers should receive.

Principles, integrity and rules of conduct demand that we examine each issue completely; first on its own merits and second on how it affects the entire order. This was not done. This Commission claims to be working to develop a competitive market. In this Order, the majority has failed.

As an example, when analyzing Special Construction Charges that Ameritech charges competing carriers, I proposed language that would have required Ameritech to prove that the Special Construction Charges imposed on competitors are not already being recovered in the Unbundled Network Element charges the competitors pay Ameritech. My language also mandated that there should be parity between the rate Ameritech charges competitors for Special Construction Charges and the rate it charges its own affiliates for the same service. The dollars involved may not be large; however, the principle is immense because parity and proper recovery are fundamental in a competitive market. To my astonishment, my proposal received no support from my fellow commissioners.

For all these reasons and many more, I cannot support this order and will file a formal dissent in this docket.